

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4234 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GELIKEPS PVT LTD

Versus

UNION OF INDIA

Appearance:

MR MIHIR H JOSHI for Petitioner

MR JAYANT PATEL for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 29/05/98

ORAL JUDGEMENT

Rule. Mr. Jayant Patel, learned Additional Standing Counsel appearing for the respondents waives service of rule. On the facts and in the circumstances of the case, the matter is taken up for final hearing today.

2. The Petitioner herein is the Company duly registered under the Companies Act, 1956. It produces

excisable goods. A show cause notice dated 4th January, 1995 was issued to the petitioner Co. calling upon it to pay differential duty of Rs. 2,60,976.60/- for the goods cleared during the period from 8/6/1994 to 31/10/1994. After the service of notice, the petitioner filed written statement making averment that the demand of the duty was not legal. The petitioner was then served with another notice dt. 14/3/1995 demanding duty of Rs.1,39,653-50 Ps. The Respondent No.3 passed the order on 27/2/1998 in favour of the petitioner qua the claim in 2nd notice, but by the order dt. 20/2/1998, he confirmed the demand of the Rs. 2,60,976-60 Ps. under Sec.11-A of Central Excise Act. Being aggrieved by the said confirmatory order on 1st April, 1998, the petitioner filed an appeal before the respondent No. 2. In the said appeal, petitioner also preferred an application for stay. The Respondent No. 2 has yet not heard the appeal and the application for stay, though requested on 25/5/1998. Meanwhile, respondent No. 3 and 4 were pressing much for recovery even by resorting to coercive measures. The petitioner, therefore, again requested the respondent No. 2 to hear the appeal and application for stay at the earliest but as the respondent No. 2 paid no attention, this petition has been filed for necessary direction to respondent No. 2 to hear the appeal at the earliest and dispose the same of on merits.

3. So long as the application for stay is pending before respondent No. 2, it would not be just and proper on the part of respondents nos. 3 and 4 to resort to coercive measures and recover the amount. In such facts and circumstances of the case, respondent No. 2 is required to be directed to dispose of the application for stay at the earliest.

4. For the aforesaid reasons, this application is allowed. The respondent No. 2 is directed to dispose of the application for stay preferred by the petitioner in the appeal filed by the petitioner before it within one month from the date of this order. Till then, respondents nos. 3 and 4 shall not resort to coercive measures for realization of the amount of Excise duty. Rule is accordingly made absolute with no order as to costs.

(ccs) *****